

Indiana Department of State Revenue

Revenue Ruling #2004-02IT

December 2, 2004

Notice: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Adjusted Gross Income Tax, Et Al. – Community Revitalization Enhancement District Tax Credit

Authority: IC 6-3.1-19-2; IC 6-3.1-19-3; IC 6-3.1-19-5

The taxpayer requests the Department to rule on the timing of taking a CReED credit—whether the credit may be taken when the investment is made or if the credit is to be taken only after completion of the project.

STATEMENT OF FACTS

The taxpayer, an LLC, plans to construct a building in a part of a district that has been designated as a Community Revitalization Enhancement District (CReED) under IC 6-3.1-19. The taxpayer has obtained approval for a tax credit authorized under the CReED statute. The taxpayer has secured investors for the project—which is expected to begin in 2005 and to be completed in 2006. The taxpayer would like to take the credit for investments made in 2005.

DISCUSSION

IC 6-3.1-19-3(a) provides:

Subject to section 5 of this chapter, a taxpayer is entitled to a credit against the taxpayer's state and local tax liability for a taxable year if the taxpayer makes a qualified investment in that year.

It is clear from the above statute, a taxpayer is entitled to a tax credit if the taxpayer makes a qualified investment. A qualified investment is defined in IC 6-3.1-19-2:

"[Q]ualified investment" means the amount of a taxpayer's expenditures that is:

- (1) for redevelopment or rehabilitation of property located within a community revitalization enhancement district designated under IC 36-7-13;
- (2) made under a plan adopted by an advisory commission on industrial development under IC 36-7-13; and
- (3) approved by the department of commerce before the expenditure is made.

Based on these two provisions, the credit may be taken in the same year as a qualified investment is made. In the instant case then, to the extent the taxpayer makes a qualified investment in a given tax year, the taxpayer may take the credit in that year.

One limitation is imposed in IC 6-3.1-19-5. A taxpayer is not entitled to claim the credit to the extent the taxpayer substantially reduces or ceases its operations in Indiana in order to relocate them within a district. The taxpayer has stated that it will not be ceasing or reducing operations to relocate within the district. Based on this, there appears to be no reduction to the credit.

RULING

The Department rules that the taxpayer may take the credit in 2005 for investments made in 2005. The taxpayer does not need to wait until the anticipated completion of the project in 2006 to take qualified investments made in 2005.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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